



LAW OFFICE
JOSEPH G. SCONZO, P.A.

September 24, 2019

Via Certified Mail & Return Receipt

Delray Beach Police Department
300 West Atlantic Ave
Delray Beach, Florida 33444
Attn: Javaro Sims, Chief of Police

Re: Our Client: Bethany Fedorenchik Guerriero
Date of Birth: February 20, 1975
Social Security Number: XXX-XX-9217
Dates of Incident: September 20, 2017 – Present
Location of Incident: Delray Beach, Florida

Dear Chief Sims:

Please be advised that our firm has been retained by Bethany Fedorenchik Guerriero, in connection with a series of incidents beginning with the filing of a report by her ex-wife, Delray Beach Police Department (DBPD) Lieutenant, Nicole Guerriero, on September 20, 2017 and culminating in Criminal charges being filed by DBPD and her self-surrender on March 19, 2019.

Allow this letter to serve as our client's statutory notice in accordance with Florida Statutes §768.28, that she intends to pursue a claim against The City of Delray Beach and the Delray Beach Police Department.

Our client contends that on September 20, 2017, Delray Beach Police Department Lieutenant, Nicole Guerriero, filed an exaggerated and false report with a personal friend and colleague at the Delray Beach Police Department, Officer Stephanie Baker. Using her position as a Lieutenant in the Department, Nicole Guerriero was able to direct the investigation for her own personal benefit. The investigation lay dormant until January of 2019 when again Lt. Guerriero provided a sworn statement of the most recent events with regard to contact with our client to Officer Baker. Officer Baker conducted a flawed investigation orchestrated by Lt. Guerriero which subsequently allowed for Lt. Guerriero to obtain a Temporary Restraining Order (TRO) against our client who is a fellow police officer in Palm Beach Gardens, Florida. This TRO resulted in our

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client being placed on Administrative Leave by her department. The petition for the TRO sworn to and filed by Lt. Guerriero requested that our client also not contact Officer Baker, and an Assistant State Attorney in Monroe County, Florida, Colleen

The petition for the TRO sworn to and filed by Lt. Guerriero requested that our client also not contact Officer Baker, and an Assistant State Attorney in Monroe County, Florida, Colleen Dunne, who also is a personal friend of Lt. Guerriero. As part of the investigation, Lt. Guerriero consented to providing a “dump” of all of the texts and emails on her personal phone. Though not officially involved in the investigation, evidence, in particular, all of the texts and emails between our client and Lt. Guerriero, were provided to ASA Dunne.

Our client was charged under Florida Statute 784.048(2) for stalking, and subsequently self-surrendered, despite the improprieties of the Lieutenant Guerriero and her friends for her personal benefit, the obvious conflict of interest that existed during the investigation, and dissemination of evidence to parties outside of the investigation which included personal information of our client. When these issues were presented to the Chief of the DBPD, and a demand for an Internal Investigation was made, the State Attorney Office for the Fifteenth Judicial District in Palm Beach County Nolle Pross the case. An Internal Affairs Investigation by DBPD is ongoing, however the final determination may be biased because Lt. Guerriero was the former Supervisory Officer in the Internal Affairs Division and the Public Information Officer at DBPD.

As a result of this series of incidents, our client, Bethany Fedorenchik Guerriero, intends to pursue a claim for damages against The City of Delray Beach, Florida.

Finally, our client, does not have any adjudicated penalties, fines, fees, victim restitution fund, or other judgments in excess of \$200.00, whether imposed by civil, criminal, or administrative tribunal, owed by them to the State, its agencies, offices or subdivisions in accordance with Florida Statute §768.28, and thus there exists no prior adjudicated unpaid claims in excess of \$200.00.

This pre-suit notice is being sent to you in accordance with Florida Statute §768.28. If there are any technical or legal deficiencies with this notice, concerning any information required under Florida Statute §768.28, by the claimants to your agency, please notify the undersigned counsel in writing prior to the expiration of the pre-suit statutory notice deadline as to the relevant issue(s).

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Lastly, we are hereby demanding that you preserve all evidence related to Bethany Fedorenchik Guerriero and the investigation in which a Temporary Restraining Order and subsequent Criminal Charges which were filed against our client and resulted in her self-surrender. In particular, please identify and save all information, documents, photographs, audio recordings, videos, interview notes, recorded interviews, telephone records, cellular telephone “dumps” and ESI (electronically stored Information) including but not limited to the following materials:

- All notes, recordings and reports of interviews of every witness in the captioned investigation into Bethany Fedorenchik Guerriero;
- Two Stalking Packets (Items 1 & 2) including text messages from suspect obtained from Nicole Guerriero on 10/26/17, Collecting Officer Stephanie Baker;
- CD Interview #1 and CD Interview #2 (Items 3 &4) of Nicole Guerriero by DBPD obtained on 10/26/17 Collecting Officer Stephanie Baker;
- Stalking packet (Item 5) containing emails received from victim on 3/21/19 Collecting Officer Stephanie Baker;
- Thumb Drive with interviews and cellular phone dump of victim Nicole Guerriero (Item 7) received from Nicole Guerriero on 3/21/19 Collecting Officer Stephanie Baker;
- Thumb Drive (purple) with 100 thousand text messages from victim’s personal phone (Item 9) received from Nicole Guerriero on 5/23/19 Collecting Officer Stephanie Baker;
- Any and All other evidence obtained or seized during the course of the investigation, along with any reports, notes, and/or recordings involving the discovery and receipt of said evidence;
- All interoffice emails, memorandum, and/or reports related to the captioned investigation;
- All correspondence, emails, records, notes, and reports related to the dissemination of any evidence to witnesses and/or outside third parties;
- All correspondence, emails, records, notes, and reports related to the dissemination of any evidence to the State Attorneys Office in Palm Beach County;
- All correspondence, emails, records, notes, and reports generated for any evidence which has been returned to any person in this investigation prior to the receipt of the Preservation Letter.

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Please note that your failure to preserve any of this evidence may be used against you in trial and may result in a spoliation instruction. Adequate preservation of said information, documents, photographs, and videos requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection of said information, documents, photographs, and videos.

Modifying or erasing video footage will irretrievably alter the evidence it contains and may constitute unlawful spoliation of evidence. Consequently, alteration and erasure may result from your failure to act diligently and responsibly to prevent loss or corruption of said surveillance footage.

You should not defer preservation steps pending such discussions if the above referenced information, documents, photographs, videos, and ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay in production of evidence to which we are entitled, such failure would constitute spoliation of evidence, and we will not hesitate to seek sanctions.

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further directed to immediately identify and modify or suspend features of your information and devices that, in routine operation, operate to cause the loss of potentially relevant information. Examples of such features and operations include:

- Erasing video footage;
- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs.

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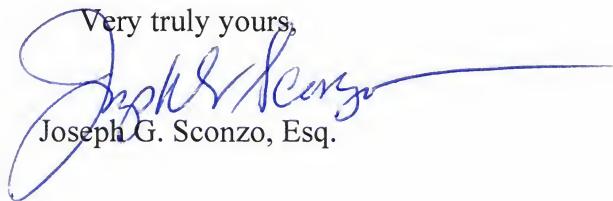
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TAKE FURTHER NOTICE that your failure to comply with this direction will cause us to seek immediate judicial relief.

Thank you for your continued and anticipated cooperation.

Very truly yours,

Joseph G. Sconzo, Esq.

Cc: Neal de Jesus, Interim City Manager
Joyce Billingsley, Interim City Manager
Shelly Petrolia, Delray Beach Mayor